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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re:
CUPERTINO SQUARE, LLC, et al.,
Debtor.

Case No.: 08-54897-MM

(Jointly Administered with
Case No. 08-54901-MM)

CHAPTER 7

**FINAL REPORT AND ACCOUNT
PURSUANT TO RULE 1019 OF THE
FEDERAL RULES OF BANKRUPTCY
PROCEDURE**

[No Hearing Required]

**TO: THE HONORABLE MARILYN MORGAN, UNITED STATES BANKRUPTCY
JUDGE**

Debtors Cupertino Square, LLC ("Cupertino Square") and Vallco International Shopping Center, LLC ("Vallco") (collectively, the "Debtors") hereby submit their Final Report and Account Pursuant to Rule 1019 of the Federal Rules of Bankruptcy Procedure.

1. **Background:** On September 2, 2008, each of the Debtors filed voluntary petitions in this Court for reorganization relief under Chapter 11 of the Bankruptcy Code (the "Petition Date").

2. **Corporate Structure:** Cupertino Square is a Delaware limited liability company, which owned the shopping center located at 10123 N. Wolfe Road, Cupertino, California (the

1 “Shopping Center”). Cupertino Square’s sole member is Vallco International Shopping Center
2 LLC (“Vallco”). The Shopping Center is commonly known as the Cupertino Square mall.

3 3. Orbit Properties, LLC (“Orbit” or “Orbit Properties”) is the managing member of
4 Vallco, and Orbit Resources, Inc. is the managing member of Orbit Properties. Orbit Properties
5 made its investment and acquired its 85% interest in Vallco on September 6, 2007, just under a
6 year before the commencement of the Debtors' bankruptcy cases.

7 4. **Construction Loan:** Prior to the filing of the Debtors' bankruptcy cases and in
8 connection with the construction and improvements to the Shopping Center, Cupertino Square
9 entered into a construction loan (the “Construction Loan”) with Gramercy Warehouse Funding I
10 LLC (“Gramercy”). The Construction Loan was to rehabilitate the Shopping Center, construct
11 improvements to the common area, and build out new tenant spaces.

12 5. A more and complete description of the Debtors' background, corporate and
13 lending structure can be found in the Declaration of Stephen Wei (Docket No. 81).

14 6. **Committee Appointment:** On or about October 1, 2008, the United States
15 Trustee appointed the Official Committee of Unsecured Creditors to serve in the Cupertino
16 Square bankruptcy case. (Docket No. 85).

17 7. **Consolidation of Cases:** The Debtors' cases were jointly administered pursuant to
18 Order of this Court on October 14, 2008 (Docket No. 140).

19 8. **Responsible Individual:** During the pendency of the bankruptcy cases, William
20 Hu was the responsible individual for the Debtors.

21 9. **Employed Professionals:** Debtors employed Thelen LLP as counsel under orders
22 of the Court entered on September 24, 2008 (Docket No. 74) in Case No. 08-54897-MM, and on
23 September 25, 2008 (Docket No. 37) in Case No. 08-54901-MM. However, in October 2009,
24 Thelen's partnership elected to dissolve effective December 1, 2008. Three of the four attorneys
25 who worked on the Debtors' bankruptcies at Thelen moved to Winston & Strawn LLP: Richard
26 A. Lapping, Marcus O. Colabianchi and Justin D. Pauls. The Court entered the order employing
27 Winston & Strawn LLP as counsel to the Debtors on December 17, 2008 (Docket No. 321).

28 10. Cupertino Square employed special counsel (Donald Dvorin and George P.

1 Eshoo) for certain matters as well as an accountant firm (C. G. Uhlenberg, LLP) for tax
2 preparation purposes, a valuation expert (Chris Carneghi) in connection with the relief from stay
3 motions filed by Gramercy, and an investment banker (Venturi & Company).

4 11. **Other Professionals:** Certain other professionals from Orbit provided services as
5 independent contractors.

6 12. **Foreclosure of Shopping Center:** In March 2009, Gramercy obtained relief from
7 the automatic stay to complete its foreclosure on the Shopping Center. (Docket No. 427) On or
8 about May 15, 2009, a trustee's sale was conducted with Gramercy emerging as the successful
9 bidder and the Shopping Center was lost.

10 13. **Conversion of Cases:** Upon motion by the Office of the United States Trustee,
11 the Debtors' bankruptcy cases were converted to Chapter 7 by order of this Court on June 26,
12 2009. (Docket No. 489)

13 14. **Summary of Debtors' Assets:** Cupertino Square's primary asset – the Shopping
14 Center – has been lost to foreclosure. Vallco's primary asset is its equity ownership in Cupertino
15 Square and an adjacent parcel of land to the Shopping Center generally referred to as the "Senior
16 Center Site." United Commercial Bank ("UCB") held a deed of trust against the Senior Center
17 Site and obtained relief from the automatic stay to proceed with the foreclosure process against
18 that parcel. (Docket No. 358)

19 15. **Monthly Operating Reports:** The Debtors' Monthly Operating Report ("MORs")
20 for the period from June 2009 have been filed with the Court. The MORs reflects the total
21 amount of cash on hand at the time of the conversion of the case. Cupertino Square is also
22 holding funds that Gramercy contends constitute Gramercy's cash collateral.¹

23 16. **Litigation:** There are two related adversary proceeding pending involving the
24 Debtors and Gramercy – Adversary Proceeding Nos. 08-05331 and 08-05338. Both of the
25 adversary proceedings involve affirmative claims against Gramercy. A summary of the
26 proceedings are as follows:

27 ¹ Gramercy motion seeking, among other things, a turnover of its collateral is scheduled for a
28 continued hearing for July 30, 2009 at 2:00 p.m.

1 • The Removed Action: In 2008, various disputes arose between Debtors
2 and Gramercy. The disputes, which arose prepetition, between Cupertino Square and Gramercy
3 resulted in litigation in the Santa Clara Superior Court, bearing case number 108CV109461 (the
4 "Removed Action" or the "State Court Case"). In connection with that action, a receiver was
5 appointed on or about June 17, 2008 (over Cupertino Square's objections) to operate the
6 Shopping Center.

7 • On November 19, 2008 Debtors filed notice of removal of the State Court
8 Case first in this Court, and then in Santa Clara County, and served notice of removal on all
9 parties to the State Court Case. At the request of the Clerk of the Court, Debtor filed second a
10 notice of removal and simultaneously opened Adversary Proceeding No. 08-05331 on December
11 4, 2008.

12 • In the Removed Action, Cupertino Square brought the following claims
13 against Gramercy: (1) breach of contract in connection with Gramercy's failure to approve a
14 compromise of a dispute between Cupertino Square and American Multi-Cinema, Inc. (the
15 "AMC Dispute"); (2) breach of the implied covenant of good faith and fair dealing of the
16 Construction Loan in connection with Gramercy's failure to approve of a compromise of the
17 AMC Dispute; (3) breach of contract related to Gramercy's failure to distribute funds in
18 connection with certain loan draw requests; and (4) breach of contract in connection with
19 Gramercy's failure to approve new tenant leases for Hofbrau House, 24 Hour Fitness, and Steve
20 & Barry's.

21 • The Removed Action included claims by and against guarantor
22 defendants. At a hearing on June 26, 2009, the Court remanded the Removed Action to the
23 Santa Clara County Superior Court solely with respect to (1) Gramercy's claims against Cross
24 Defendants Alan Wong, Emily Chen, Phuong Pham and Hung Nguy and (2) Phuong Pham's
25 claim against Gramercy. The balance of the relief requested in Gramercy's remand motion is to
26 be considered at a continued hearing on July 30, 2009 at 2:00 p.m.

27 • The Claim Objection: On December 10, 2008, Debtors filed Debtor's
28 Amended Objection to Claim of Gramercy Warehouse Funding I, LLC and Debtors' Amended

Counterclaims Against Gramercy Warehouse Funding I, LLC (the "Objection") (Adversary Proceeding No. 08-05338) (Adversary Proceeding Docket No. 7). In that proceeding, Cupertino Square brings four claims against Gramercy that are virtually identical to those brought in the Removed Action: (1) breach of contract in connection with Gramercy's failure to approve a compromise of the AMC Dispute; (2) breach of the implied covenant of good faith and fair dealing in connection with the Construction Loan; (3) breach of contract in connection with Gramercy's failure to distribute funds in connection with certain construction loan draw requests; and (4) breach of contract in connection with Gramercy's failure to approve new tenant leases for Hofbrau House, 24 Hour Fitness, and Steve & Barry's.

- Additional claims were brought based upon Gramercy's September 2007 misrepresentations and false promises to continue advancing funds under the Construction Loan and the effect of Gramercy's failure to advance such funds. These include Debtors' claims against Gramercy for intentional misrepresentation, false promise, negligent misrepresentation, intentional interference with prospective economic relations, and negligent interference with prospective economic relations, and Vallico's claim against Gramercy for equitable estoppel.

- The Debtors filed a motion to consolidate these two adversary proceedings,² which is currently scheduled for hearing on August 11, 2009 at 2:00 p.m.

17. Reclamation Adversary Proceeding: There is an additional adversary proceeding titled, "Richards v. Cupertino Square, LLC" Adversary Proceeding No. 08-05277, which involves a reclamation claim brought by Mr. Richards' business – EDI Lighting – for \$32,779.42. At the May 12, 2009 continued status conference, the Court ordered the discovery cut-off as of July 15, 2009 and the dispositive motion cut-off of September 15, 2009. The Court also ordered a further CMC for September 15, 2009 at 10:30 a.m.

18. **Disbursements**: Since Cupertino Square was operating the Shopping Center

² It should be noted that as part of the debtor-in-possession credit facility (the "DIP Loan") (Docket Nos. 97, 98, and 99), which was approved by this Court (Docket No. 484), all commercial tort claims, including Cupertino Square's prepetition claims against Gramercy, were pledged to Orbit as collateral to secure the DIP Loan. There is also a carve-out in the DIP Loan for professional fees. (Docket No. 98)

1 from the Petition Date through May 16, 2009, there were many disbursements made. The
2 Debtors' disbursements made during the course of their chapter 11 bankruptcy cases are reflected
3 in the MORs filed with this Court.

4 19. **Unpaid Ch. 11 Debts:** On June 13, 2009, the Debtors filed List of Debts Incurred
5 Post-Petition Pursuant to Rule 1019(5)(A)(i) of the Federal Rules of Bankruptcy Procedure with
6 the Court. (Docket No. 498) The total amount of unpaid debts – which are mostly professional
7 administrative costs incurred during the course of the Debtors' chapter 11 bankruptcy cases – is
8 \$1,615,095.40, subject (in part) to this Court's approval.

9 20. **UST Fees:** The Debtors are current on its quarterly fees to the Office of the
10 United States Trustee through the First Quarter of 2009.

11 21. **Claim Objections:** The Debtors objected to the claims filed by the guarantors in
12 February 2009. (Docket No. 391) Specifically, the Debtors objected to the claims nos. 28, 31-35
13 filed against Cupertino Square and claims nos. 7, 9-13 filed against Vallco. The claims were
14 disallowed either by stipulation (Docket No. 435) or by court order (Docket No. 423).

15 22. The Debtor commenced a preliminary review of the other claims filed in the cases
16 but filed no other objections.

17 23. **Preferences of Avoidance Actions:** The Debtors did not conduct an in-depth
18 analysis whether there were preferences or other avoidance actions in these cases.

19 24. **Upcoming Hearings:** Below are the matters currently set for hearing in the
20 bankruptcy cases and related adversary proceedings.

21 • Motion of Gramercy Warehouse Funding I LLC for Order (I) Dismissing
22 Bankruptcy Case and (II) Directing Debtor to Transfer Collateral: Gramercy's request in the
23 motion for the turnover of its collateral will be considered at a continued hearing on July 30,

24 2009 at 2:00 p.m.

25 • Application for Compensation and Reimbursement of Expenses by Special
26 Unlawful Detainer Counsel for Cupertino Square – Law Offices of George P. Eschoo –
27 scheduled for hearing on July 30, 2009 at 2:00 p.m.

28 • Final Application for Compensation and Reimbursement of Expenses for

the State Court Receiver Douglas P. Wilson and Other Professional for fees of \$57,663.50, which is scheduled for hearing on August 6, 2009 at 2:00 p.m.

- Final Application for Compensation and Reimbursement of Expenses for the State Court Receiver's counsel for fees of \$94,763.75, Expenses: \$4,411.74, which is also scheduled for hearing on August 6, 2009 at 2:00 p.m.³

- Gramercy Warehouse Funding I LLC's Motion to Remand Adversary No. 08-05331 to the Superior Court of California, County of Santa Clara: On June 26, 2009, the Court remanded the lawsuit entitled "Cupertino Square LLC v. Gramercy Warehouse Funding I LLC et al.," Case No. 108 CV 109461, to the Santa Clara County Superior Court solely with respect to (1) Gramercy's claims against Cross Defendants Alan Wong, Emily Chen, Phuong Pham and Hung Nguy and (2) Phuong Pham's claim against Gramercy. The balance of the relief requested in the motion will be considered by the Court at a continued hearing on August 11, 2009 at 2:00 p.m. (as reflected in the entry on the Docket dated June 26, 2009).

- Debtors' Motion to Consolidate Removed Action and Claim Objection will be considered at a continued hearing on August 11, 2009 at 2:00 p.m.

- Status Conferences in the Removed Action and Claim Objection is scheduled for September 15, 2009 at 10:30 a.m. Gramercy's time to respond to the complaint has been extended by stipulation until September 4, 2009.

- Status Conference in the Reclamation Claim is also scheduled for September 15, 2009 at 10:30 a.m.

Dated: July 22, 2009

WINSTON & STRAWN LLP

By /s/ Marcus O. Colabianchi
Marcus O. Colabianchi
Attorneys for Debtors
CUPERTINO SQUARE, LLC, et al.

³ The receiver and his counsel have filed an application for an order shortening time ("OST Application") on the hearing for their respective fee applications. They have requested a July 30, 2009 hearing date. As of the filing of this Final Report and Account, the Court has yet to rule on the OST Application.